

# SUPREME COURT OF ARKANSAS

No. 07-444

IN RE: ARKANSAS BAR  
ASSOCIATION PETITION TO  
REVISE PROCEDURAL RULES  
OF THE ARKANSAS JUDICIAL  
DISCIPLINE AND DISABILITY  
COMMISSION

Opinion Delivered May 24, 2007

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## PER CURIAM

Amendment 66 to the Arkansas Constitution created the Arkansas Judicial Discipline and Disability Commission, and subsection (f) of the amendment provides that the Supreme Court shall make procedural rules implementing this amendment. We adopted rules in 1989. *In Re Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission*, 298 Ark. Appx. 654, 770 S.W. 2d 116 (1989). Some amendments have been made over the years, and in 2005, the court requested the Arkansas Bar Association to perform a comprehensive review of the rules and report its findings. In response to this request, the Bar Association appointed the Task Force on Procedural Rules of the Arkansas Judicial Discipline and Disability Commission composed of six circuit judges and nine lawyers.

The Task Force submitted its report to the House of Delegates on January 20, 2007, and the House of Delegates directed the Bar Association to petition the Supreme Court to revise the rules of the Commission. The petition filed on May 2, 2007, is now before the court.

First, we thank the Bar Association for assisting the court in this endeavor and

especially the members of the Task Force: Judges Kathleen Bell, Elizabeth Danielson, Robert Edwards, Mary Ann Gunn, Willard Proctor, and Hamilton Singleton; Attorneys Vince Chadick, Nate Coulter, Thomas Curry, Barbara Halsey (now circuit judge), Larry Jegley, Sean Keith, Gary Nutter, Kent Rubens, and the Task Force's chair, Robert Cearley, Jr.

The report is attached as Exhibit A to the petition, a Summary of Recommendations is attached as Exhibit B, and Recommended Changes in Rules, Policies, and Guidelines are attached as Exhibit C. To assist our deliberations on these proposals, we solicit comments from the bench and bar. We have appended the petition and exhibits to this *per curiam* order and+ publish them for comment. Comments should be made in writing before September 1, 2007, and they should be addressed to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Judicial Discipline and Disability Rules, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

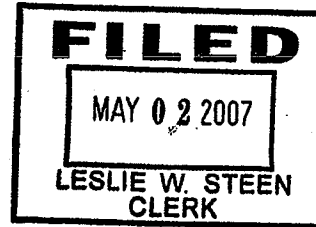
07-444

IN THE SUPREME COURT OF ARKANSAS

ARKANSAS BAR ASSOCIATION

PETITIONER

IN RE:      PROCEDURAL RULES OF THE  
              ARKANSAS JUDICIAL DISCIPLINE  
              AND DISABILITY COMMISSION



PETITION

**1**

The Arkansas Bar Association, at the direction of its House of Delegates, and acting through its President, James D. Sprott, and Past Presidents, A. Glenn Vassar and Frederick S. Urserly, and by Robert M. Cearley, Jr., chair of its Task Force on Procedural Rules of the Arkansas Judicial Discipline and Disability Commission, petitions the Court to revise the rules of the Commission as set out below, and in support states:

1. This Court is authorized and directed to promulgate rules regarding all matters of Commission operations and all disciplinary and disability proceedings pursuant to Amendment 66 to the Constitution of Arkansas, and Act 637 of 1989 and subsequent Acts codified as Ark. Code Ann. § 16-10-401, *et seq.*
2. The Court first adopted rules for the Commission by *PER CURIAM* on May 8, 1989; and amended May 14, 1990; July 16, 1990; March 16, 1992; July 6, 1992; and July 12, 1993.
3. At the request of the Court, Petitioner Arkansas Bar Association appointed its Task Force on Procedural Rules of the Arkansas Judicial Discipline and Disability Commission in May 2005 to assist the Court in discharging its responsibility.
4. The Task Force, comprised of 6 circuit judges and 9 lawyers, met on 10 occasions over 18 months, completed its assignment, and submitted its Report the

Arkansas Bar Association House of Delegates on January 20, 2007. A copy of the Report is attached as Exhibit A.

5. For the Court's convenience a Summary of Recommendations is attached as Exhibit B, and the specific Rule, Guideline and Policy changes recommended are attached as Exhibit C.

Wherefore, Petitioner asks the Court to exercise its constitutional authority to adopt the rules and revisions and direct the policy and guideline changes as set out in Exhibits A, B, and C.

Respectfully submitted,

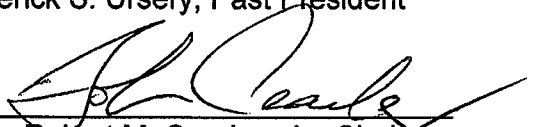
ARKANSAS BAR ASSOCIATION

James D. Sprott, President

A. Glenn Vasser, Immediate Past President

Frederick S. Ursery, Past President

BY:

  
Robert M. Cearley, Jr., Chair  
Task Force on Procedural Rules of the  
Arkansas Judicial Discipline and  
Disability Commission

**Arkansas Bar Association**  
**Report of the Task Force**  
**on**  
**Procedural Rules of the Arkansas Judicial Discipline and Disability Commission**

**Background**

**Arkansas Discipline and Disability Commission**

The Arkansas Judicial Discipline and Disability Commission was established in 1989 by Amendment 66 to the Arkansas Constitution, and implemented by Act 637 of 1989, codified as Ark. Code Ann. § 16-10-401 *et seq.* The Commission is comprised of nine members -- three lawyers, three judges, and three public members. Alternates are also appointed for each member, and serve "upon the call of, or on behalf of, the chairman." (See Commission Rule 1. E.) The Commission has six full-time employees, including an Executive Director, Deputy Executive Director, and Investigator. Jurisdiction of the Commission extends to about 400 judges of the appellate, circuit, district, city, and police courts, as well as retired judges who serve by assignment, and others who perform judicial functions, such as referee, special master, court commissioner, and magistrate. According to the last two Annual Reports, the Commission receives and disposes of approximately 300 complaints each year, operating on an annual budget of about \$460,000.

Rules governing the operation of the Commission were adopted by the Arkansas Supreme Court by *per curiam* of May 8, 1989, and amended in 1990, 1992, and 1993. Rules 1 - 7 deal with administrative matters, jurisdiction, and disclosure of information. Rule 10 covers interim sanctions. Rule 12 provides for Supreme Court review of formal decisions of the Commission, and Rules 13-14 cover mental and physical disability and involuntary retirement. Rules 8, 9, and 11 set out the procedures to be followed to investigate and adjudicate complaints. The Commission has also adopted a number of Guidelines and Operating Policies under authority granted by Rule 2. All can be found on the Commission's website at <http://www.state.ar.us/jdd> and in the Appendix to this report.

**Task Force on Disciplinary Rules and Procedures**

In response to the request of the Arkansas Supreme Court, Association President Fred Ursery appointed this Task Force on May 20, 2005, to review the rules and procedures governing the operation of the Commission, invite and evaluate comments and suggestions on how they might be improved, and report its recommendations to the Board of Governors. The Task Force, consisting of six judges and nine lawyers, met on 10



occasions over 18 months. Its efforts focused on Commission Rules 8, 9 and 11, and the receipt, investigation, and adjudication of complaints.

At its first meeting, Arkansas Judicial Discipline and Disability Commission Chairman, Mike Gott, and Executive Director, James Badami, appeared at the invitation of the Task Force to explain how the Commission works. They shared their views on the strengths and weaknesses of current rules and procedures and invited questions, comments, and suggestions on how they might be improved. The Executive Director subsequently wrote to the Task Force asking that it address several issues of concern. (See Appendix).

At its second meeting, former Commissioners and Circuit Judges, David B. Bogard and John B. Plegge; and former Commissioner Laurie Bridewell offered their comments and observations on the work of the Commission and how its operations might be improved.

At the third and fourth meetings, Circuit Judges Ben Story, Jim Spears, Phil Shirron, and David Switzer presented the Recommendation of the Arkansas Judicial Council containing comprehensive suggestions for changes in the Commission's rules and procedures.

Mary Devlin, Regulation Counsel of the American Bar Association Center for Professional Responsibility, appeared at the fifth meeting to present the Model Rules For Judicial Disciplinary Enforcement developed under the auspices of the ABA.

At its sixth meeting, the Task Force again heard from the Executive Director of the Commission, accompanied by Jay Wills, Deputy Executive Director and Legal Council to the Commission, who presented a written response to the Recommendation of the Judicial Council, and responded to questions. Stark Ligon, Executive Director of the Supreme Court Committee on Professional Conduct, was also present by invitation and offered his comments and observations on issues common to the Committee and the Commission.

The remainder of the meetings were spent assimilating and analyzing information and formulating the report and recommendations that follow. The minutes of all meetings can be found in the Appendix to this report.

The Task Force undertook a thorough review of the Commission's rules and procedures, published Guidelines and Policies, the Recommendation of the Arkansas Judicial Council and response of the Commission staff, and compared them to the ABA Model Rules and the rules of several sister states.

The Task Force also reviewed the following publications and references:

*2004 Annual Report* and the *2005 Annual Report* of the Arkansas Judicial Discipline and Disability Commission

*How Judicial Conduct Commissions Work*, published by the American Judicature Society

*Model Rules For Judicial Disciplinary Enforcement* published by the American Bar Association and the State Justice Institute

The disciplinary rules of numerous states, particularly those of Kansas, Tennessee, and Wyoming.

All sources except the disciplinary procedures of other states appear in the Appendix to this report.

### **Summary of Recommendations**

The Task Force recommends the action indicated in each of the following areas:

1. **Intake Procedures and Complaint Forms** — adoption by the Commission of a new sworn or verified complaint form and intake instructions pursuant to authority granted in Rule 2, and abrogation of the “sworn complaint” and “statement in lieu of complaint” provided for in Rule 8. E. in favor of a formal statement of allegations that meets all notice and specificity requirements of due process (*This can be accomplished without a rule change*);
2. **Anonymous Complaints and Media Based Complaints** — modification of current Rule 8. A. to require that all but anonymous complaints be signed;
3. **Contact with Potential Witnesses** — modification of current Rule 8 as spelled out in Proposed Rule 8, and adoption of appropriate Guidelines and Policies governing contact with potential witnesses and dissemination of information;
4. **Ex Parte Communication** — adoption of a new Rule 11 prohibiting *ex parte* communication on matters of substance between persons involved in the investigation and persons involved in the adjudication of a complaint (*to replace current Rule 11 which is eliminated by Proposed Rules 8 and 9*);
5. **Use of Separate Investigation Panels and Hearing Panels** — adoption of new rules to involve Commission members and Alternates in early decision-making on complaints and investigations (*See Proposed Rules 8 and 9, and Proposed Rule 1. F.*);
6. **Redundancy in Hearing Procedures — Number of Appearances** — abrogation of current Rules 8 and 9 and adoption of proposed Rules 8 and 9 to alleviate the “screening hearing” and the “Probable Cause” hearing and to provide for screening,

investigation and hearing of complaints by separate Investigation Panels and Hearing Panels (*See Proposed Rules 8 and 9*).

**7. *Private/Informal Disposition of Complaints*** — rejection of the suggestion of private or informal disposition of complaints;

**8. *Jurisdiction — Ambiguities and Conflicts Between Rules 6 and 12*** — adoption of revised Rule 6 to confirm jurisdiction of the Commission over conduct both prior to and during service in judicial office and jurisdiction of the Supreme Court Committee on Professional Conduct over the conduct of former judges, even if already adjudicated by the Commission; and,

**9. *Limitation of Actions/Disposition of Complaints*** — adoption by Rule of a timetable for adjudication of complaints (*See Proposed Rule 15*).

These recommendations are further explained below.

## **Recommendations of the Task Force**

### **1. Intake Procedures and Complaint Forms**

This topic implicates two stages of the disciplinary process, the intake complaint and the formal complaint, and Rules 2 and 8B which give the Commission authority to adopt appropriate forms, initiate and conduct investigations, and receive a "sworn complaint" or prepare a "statement of allegations" where "sufficient cause to proceed" is found. Commission Operating Policy F.3. covers the same subjects.

#### **Intake Complaint**

The Commission's practice at the time the Task Force began its work was to send a complaint form and a document entitled, "How To File A Complaint Against A Judge" to anyone who contacted the Commission alleging judicial misconduct. (*See Appendix*). One of the criticisms of this practice was that the complaint form was suggestive of misconduct as it included a section inviting the complainant to simply enter a check mark in front of selected allegations of misconduct. The Arkansas Judicial Council's Recommendation includes a new instruction sheet and a new form for the intake complaint. The Commission's Executive Director indicated at the June 2006 meeting of the Task Force his willingness to accept the Council's recommendation to eliminate the multiple choice allegations of misconduct and adopt a neutral complaint form. The Commission apparently agreed, and reportedly this has now been done; the new Complaint form currently in use by the Commission is attached. (*See Appendix*). The complaint form recommended by the Task Force is virtually identical except that it must be sworn or affirmed under penalty of perjury, a formality the Task Force believes is essential.

The Task Force recommends the use of the following Intake Instruction cover sheet, derived from that employed by the Arkansas Supreme Court Committee on Professional Conduct, and Complaint Form, both adapted from the Recommendation of the Judicial Council:

**Arkansas Judicial Discipline & Disability Commission**  
**Tower Building, Suite #1060**  
**Little Rock, Arkansas 72201**  
**Phone: (501)682-1050 Fax (501)682-1049**

**PLEASE READ CAREFULLY**

The Judicial Discipline and Disability Commission is an independent state agency that receives and investigates complaints concerning judges. The Commission has the authority to discipline or recommend discipline to the Arkansas Supreme Court for judges who are in violation of the Arkansas Code Of Judicial Conduct adopted by the Supreme Court. The Commission may issue a public admonishment, reprimand, or censure. For more serious violations, the Commission may make recommendations to the Arkansas Supreme Court to impose sanctions that include removal from the bench, suspension from the bench with or without pay, leave with or without pay, or involuntary retirement.

The Commission's authority is limited to violations of the Arkansas Code of Judicial Conduct and the sanctions set out above. It has no authority to compel a judge to take any particular course of action nor does the Commission become involved in litigation of legal matters. Please understand that the Commission cannot represent you, give you any legal advice, or change the outcome of a court decision.

If you feel that a judge has acted in a manner that violates the Arkansas Code Of Judicial Conduct, fill out as completely as possible the attached complaint form, and return it to this office. Include any additional documentation that you believe is relevant and material to your complaint. If sufficient cause is found to file a formal complaint, some or all of your supporting documentation may be included as exhibits. **Please provide a narrative account of the judge's actions of which you complain that is FACTUAL.** Conclusory statements such as, "He's a liar," "She didn't do me right," "He's incompetent," etc., have no evidentiary value and do not assist in the evaluation of your complaint.

The Commission will review the information in your complaint form, conduct any necessary investigation, and advise you whether your concerns fall within the Commission's limited authority. Each complainant will be informed by letter whether a complaint states a basis for further consideration. If after initial investigation it appears that there is sufficient cause to proceed, the Commission will prepare a formal complaint which will be sent to the judge

for a response. The complainant will be provided a copy of any response and have the opportunity for rebuttal, if appropriate. Any rebuttal will be made available to the respondent judge. All these documents will then be forwarded to the Commission for review and action. You will be advised in writing of the Commission's final action. In some instances, the Commission will conduct a hearing on a complaint. If that should occur, you may have the opportunity to appear and testify at the hearing. Copies of the Arkansas Code of Judicial Conduct can be found at the following website <http://courts.state.ar.us> under "Judicial Discipline & Disability Commission."

**Arkansas Judicial Discipline & Disability Commission**  
**Tower Building - Suite # 1060 - 323 Center Street**  
**Little Rock, AR 72201**  
**Phone: (501) 682-1050 / FAX: (501) 682-1049**  
**Email: [jddc@arkansas.gov](mailto:jddc@arkansas.gov)**

**COMPLAINT FORM**

Please type or print all information

I hereby request an investigation of \_\_\_\_\_ of the \_\_\_\_\_  
(Judge's name)  
\_\_\_\_\_ Court in \_\_\_\_\_, \_\_\_\_\_ Arkansas.  
(City) (County)

Your Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: Daytime ( ) \_\_\_\_\_ Evening ( ) \_\_\_\_\_

Cellular Phone ( ) \_\_\_\_\_ Email address: \_\_\_\_\_

**STATEMENT OF FACTS**

**1. State below the specific details of what the judge did that you think constitutes misconduct or indicates disability. (Please type or print legibly in black ink.)**

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**ATTACH ADDITIONAL SHEET(S) IF NEEDED.**

2) Did you have a case before this judge? \_\_\_\_yes\_\_\_\_no  
If yes, is the case still pending? \_\_\_\_yes\_\_\_\_no

3) When and where did the ethical misconduct occur?

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_

4) If your complaint arose from a court case, please provide the following information:

Case Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

**Plaintiff's information:**

**Defendant's information:**

Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Daytime phone \_\_\_\_\_

Daytime phone \_\_\_\_\_

**Attorney's information (Plaintiff):**

**Attorney's information (Defendant):**

Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Phone \_\_\_\_\_

**Additional Attorney's Information (use additional pages if necessary):**

Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Phone \_\_\_\_\_

Represented \_\_\_\_\_

Represented \_\_\_\_\_

*What type of case gives rise to this complaint? Please check one.*

\_\_\_\_\_ criminal; \_\_\_\_\_ small claims; \_\_\_\_\_ civil; \_\_\_\_\_ probate;  
\_\_\_\_\_ domestic (family) relations; \_\_\_\_\_ other (specify) \_\_\_\_\_

*How are you interested in the case? Please check one.*

\_\_\_\_\_ plaintiff / petitioner; \_\_\_\_\_ defendant/respondent; \_\_\_\_\_ unrelated to a case;  
\_\_\_\_\_ attorney for \_\_\_\_\_; \_\_\_\_\_ witness for \_\_\_\_\_;  
\_\_\_\_\_ family member of \_\_\_\_\_; \_\_\_\_\_ other (specify) \_\_\_\_\_

**5) List documents you have attached that help support your complaint that the judge has engaged in misconduct or has a disability:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6) List documents that are not attached but will be needed by the Commission to support your complaint and may help in the Commission's investigation:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7) Identify, if possible, any other witnesses to the judge's conduct: (example: reporters, bailiffs, clerks, court reporters, law enforcement officers, or other attorneys, plaintiffs, defendants or witnesses that were present at the time).**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**NOTE: STATE LAW PROVIDES THAT THE JUDICIAL DISCIPLINE & DISABILITY COMMISSION'S PROCEEDINGS ON THIS REQUEST FOR INVESTIGATION ARE CONFIDENTIAL. FILING A COMPLAINT IS NOT A SUBSTITUTE FOR APPEAL AND HAS NO EFFECT ON YOUR LEGAL OR APPELLATE RIGHTS. THE APPELLATE PROCESS IS SUBJECT TO STRICT DEADLINES AND YOU SHOULD IMMEDIATELY OBTAIN LEGAL ADVICE ABOUT YOUR APPELLATE REMEDIES..**

**I request that the above complaint, supported by the Statement of Facts, be investigated by the Judicial Discipline & Disability Commission and that appropriate action be taken.**

*I swear or affirm under penalty of perjury that the information furnished is true and correct to the best of my knowledge, information, and belief.*

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

The Task Force believes that these changes provide meaningful guidance to the complainant without suggesting misconduct on the part of the judge.

### **Formal Statement of Allegations**

When, after initial investigation and evaluation, sufficient cause to proceed is found, current Rule 8E and Commission Operating Policy F.3. provide for preparation and filing of "a detailed, signed, sworn complaint against the judge." At the first meeting of the Task Force, the Executive Director suggested that this "sworn complaint" is redundant and should be eliminated in favor of a statement of allegations that would meet all due process notice and specificity requirements. The Judicial Council's Recommendation is similar, suggesting the following language be adopted by Rule:

***The formal judicial complaint form should state a cause of action. It should state the alleged Code of Judicial Conduct that has been violated and the specific facts that support the alleged violation.***

The Task Force supports replacing the "sworn complaint" or "statement in lieu of complaint" with a formal statement of allegations that cites specific provisions of the Code of Judicial Conduct alleged to have been violated and the specific facts offered in support of the alleged violation(s). Appropriate language is incorporated in the recommended changes to Rules 8, 9, and 11, below. This proposed rule change would accommodate all parties and address their concerns. *(Current Rules 8, 9, and 11 are combined and substantially rewritten in Proposed Rules 8 and 9, eliminating current Rule 11 which is replaced by Proposed Rule 11 on ex parte communication.)*

## **2. Anonymous Complaints and Media Based Complaints**

Commission Rule 5 provides that the Executive Director "shall . . . (c)onsider information from any source and receive allegations and complaints." The Executive Director explained that anonymous complaints are unsolicited complaints that come in without attribution, sometimes a phone call followed by a letter, or sometimes just by letter. He further explained that no investigation is initiated absent a written complaint, even though it may be anonymous. Anonymous complaints and media based investigations are controversial, but every state judicial disciplinary authority accepts anonymous complaints and considers information gleaned from the news media. Anonymous complaints serve the public by providing a mechanism for complaint when aggrieved parties simply would not come forward unless they could remain anonymous. The favorite example is the complaint initiated by a member of the staff of a judge whose conduct is the subject of the complaint. Information gleaned from news media simply cannot be ignored when the conduct of public officials is involved. In 2004 and 2005, the Commission received a total of 28 anonymous complaints. No total is reported for the number of media based investigations initiated.

The Judicial Counsel recommended adoption of the following rule:

***All complaints must bear the name of the complainant, unless anonymous. If an individual staff member or Commissioner files or solicits a complaint, he or she shall sign the complaint.***

The rationale offered for this proposal is that the respondent judge should be entitled to face his accuser, except where the accuser is truly anonymous. Implementing this recommendation would require that every complaint before the Commission be sworn upon oath or verified by the person or persons making the complaint. When the complaint is anonymous or based upon media reports, it would have to be signed by the Executive Director.

The Task Force endorses the recommendation of the Judicial Council and recommends inclusion of the following language which appears in Proposed Rule 8. A., below.

***All complaints shall bear the name of the complainant, unless anonymous or based upon medial reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director. If the Executive Director, an individual staff member, Commission member or Alternate files, solicits, or initiates a complaint, he or she shall sign the complaint.***

### **3. Contact with Potential Witnesses**

It is currently the practice of the Commission staff to send the unexpurgated complaint to potential witnesses with a letter requesting a written response detailing any knowledge the potential witness may have regarding the allegations of the complaint. The Executive Director indicated that more than 90% of complaints are dismissed after initial investigation and before the Probable Cause Hearing level. The Task Force believes that, under these circumstances, disseminating as yet unsubstantiated charges by sending copies of unexpurgated complaints to potential witnesses does not serve the public interest, contaminates the investigation, and risks harming innocent persons. It was unanimously agreed that this practice offends traditional notions of fairness, and that it should be prohibited. Witnesses should be contacted in accordance with established investigatory techniques to determine what useful information they might have, without exposing them to the unsubstantiated complaint.

The Task Force recommends adoption of language contained in Proposed Rule 8 and adoption by the Commission of appropriate Guidelines or Policies to address these issues.

### **4. Ex Parte Communication**

Currently there is no *Rule* prohibiting *ex parte* communication between Commission staff and Commission members or Alternates regarding matters which are the subject of

complaints or under investigation or consideration. There is, likewise, no *Rule* prohibiting *ex parte* communication between Commission members or Alternates and respondent judges or their family members, supporters, or potential witnesses. *Ex parte* communication is addressed in Commission Guideline C, but there is no provision for removal or recusal of the involved Commission member or Alternate.

The Task Force believes *ex parte* communication by any interested party with members of the Commission or Alternates on matters of substance relating to proceedings before the Commission should be prohibited and recommends adoption of the following language to replace current Rule 11 which is subsumed by Proposed Rules 8 and 9.

***Commission Members and Alternates shall not communicate ex parte with the Executive Director or the staff of the Commission, or the respondent judicial officer, his or her family, friends, representatives, or counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or Rules of the Commission, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A violation of this rule may be cause for removal of any member or Alternate from a panel before which a matter is pending.***

(This language is derived from Rule 7H(1) of the Procedures Regulating Professional Conduct of attorneys.)

## **5. Use of Separate Investigation and Hearing Panels**

Current rules and practices of the Commission authorize the Executive Director to determine whether to initiate an investigation based upon the contents of a written and signed complaint, an anonymous complaint, or media reports. The Executive Director indicates that he dismisses for lack of jurisdiction about 1/3 of the complaints upon first reading, and that 90% of those remaining are dismissed after some investigation but before the Probable Cause Hearing. The Judicial Council representatives expressed concern about the decision to initiate an investigation being made without the Commission or any member of the Commission participating, even in situations involving scandalous allegations that inevitably reach the public because of contacts with potential witnesses. To address these concerns, the Council recommended that a three-member panel of Commissioners make the decision by majority vote whether to pursue an investigation or move forward with a formal charge. The panel could direct staff to take specific steps in the investigation and report their findings for further consideration, or simply leave the investigation to the staff to pursue as it sees fit. The makeup of the panel would need to remain constant when the staff responds to specific requests during an investigation.

Specifically, the Judicial Counsel recommended adoption of the following rule:

***The Commission should be divided into three, "three member panels" to determine if there is sufficient cause to proceed on any complaint***

***not dismissed by the Executive Director. The Chair shall randomly select the panels and each panel shall have one public person, an attorney and a judge. Each panel shall make a prompt, discreet, and confidential investigation and evaluation to determine whether there are sufficient grounds to proceed on a complaint. If the panel votes by a two-thirds vote to proceed, the panel shall notify the judge of the Code of Judicial Conduct sections allegedly violated.***

This recommendation implicates several aspects of the Commission's procedures, and was discussed and debated perhaps more than any other topic. Of all the proposals for changes in the rules that were presented to the Task Force, it has the broadest implications. Use of panels in the investigation process that are drawn from members who will participate in adjudication of the complaint presents due process concerns inherent in any procedure that exposes fact-finders to the details of an investigation before they sit in judgment. Any such restructuring should therefore require complete separation of the investigatory and adjudicatory functions, and participation by a member in one should preclude participation in the other involving the same matter. Five states now operate with such a two-tier system: Florida, Kansas, South Carolina, Tennessee, and Wyoming. The ABA Model Rules employ panels in a similar manner. Current Rule 11 of the Commission authorizes the chairman to appoint three-member panels to conduct formal hearings, but does not address participation of Commission members in the investigatory function of the Commission.

The Task Force questioned whether such a dramatic change was needed and whether it was feasible given the structure and composition of the Commission as set out in Amendment 66 and the statutory scheme. It was noted that the requirement in Amendment 66, the enabling legislation, and existing Rules of the Commission that all decisions involving sanctions or disability be reached by "majority vote of the membership" would preclude dividing the Commission members into panels, if members serving on an investigation panel were then disqualified from serving on the hearing panel. It was then suggested that this obstacle could be overcome by utilizing Alternates to form the Investigation Panels.

After further discussion and study, the Task Force concluded that neither Amendment 66 nor the enabling legislation, Ark. Code Ann. § 16-10-401 *et seq.*, present an impediment to use of panels comprised of Commission members and/or Alternates. Nothing in applicable law or rules spells out the role of the Alternate members of the Commission or limits or restricts the role of an Alternate member in carrying out the functions of the Commission. Investigative panels could be composed solely of Alternates or both Commission members and Alternates.

If Alternates are available to serve exclusively or interchangeably with Commission members to form three-member Investigation Panels and nine-member Hearing Panels, a full nine-member Commission would be available in every instance in which a majority vote is required. The Task Force recommends implementing the two-tier system as simply as possible in conformity with the existing composition of the Commission and its existing procedural rules. Three 3-member Investigation Panels could be comprised of Commission

members and/or Alternates. All could, nonetheless, continue to serve on Hearing Panels as they do under current practice when appointed by the chairman, provided they not serve on a Hearing Panel involving any matter on which they served on an Investigation Panel.

The Task Force recommends this be achieved by adding a new paragraph F. to current Rule 1, as set out below:

#### **RULE 1. ORGANIZATION OF COMMISSION.**

...

##### ***PROPOSED Rule 1. F.***

***Investigation Panels and Hearing Panels. The initial review and investigation of complaints shall be conducted by and at the direction of an Investigation Panel, which shall act only by majority vote of the Panel. At the regular organization meetings of the Commission, the chairman shall appoint from the nine Commission members and nine Alternates no fewer than three Investigation Panels of three members, each consisting of one judicial member, one lawyer member, and one public member. Thus constituted, these Investigation Panels shall conduct and direct the initial review and investigation of complaints without the knowledge or involvement of the Commission whose members shall serve as the Hearing Panel and conduct the formal proceedings to inquire into charges against a judge. Complaints shall be allocated among the Investigation Panels in rotation. No Commission member or Alternate shall serve on a Hearing Panel involving any matter considered by an Investigation Panel of which he or she was a member.***

#### **6. Redundancy in Hearing Procedures — Number of Appearances**

The Task Force heard from lawyers, judges, former Commission members, and Commission staff that current Rules 8, 9, and 11, which allow as many as three appearances by the respondent judge, result in unnecessary proceedings. Former Commissioners complained about redundancy, and lawyers complained that multiple hearings often result in a lack of continuity in the composition of the Commission — some members being absent because of scheduling conflicts and Alternates replacing them. Examination of current rules suggests there is no real need for the “screening hearing” or the Probable Cause Hearing, and Commission staff agreed that the procedures should be streamlined to alleviate redundancy. To this end, the Task Force recommends eliminating two of three hearings provided under current rules, and combining current Rules 8, 9, and 11 into the following Rules 8 and 9.

**PROPOSED RULE 8.      PROCEDURES OF COMMISSION REGARDING  
CONDUCT OF A JUDGE**

- A.      *Initiation of Inquiry.* In accordance with these rules, any sworn or verified complaint brought to the attention of the Commission stating facts that, if true, would be grounds for discipline, shall be good cause to initiate an inquiry relating to the conduct of a judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge. (Same as current Rule 8. A.)**

***All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director. If the Executive Director, an individual staff member, Commissioner member or Alternate files, solicits, or initiates a complaint, he or she shall sign the complaint. (This is new, from Item 2, supra.)***

***All contacts with potential witnesses shall be in accordance with these Rules. (This is new, from Item 3, supra.)***

- B.      *Screening.* The Executive Director shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge shall be informed in writing of the dismissal. (Similar to current Rule 8 B, but deleting initial investigation by the Executive Director.)**
- C.      *Investigation of Complaints.* All complaints not summarily dismissed by the Executive Director shall then be presented to an Investigation Panel. The Investigation Panel shall dismiss all complaints for which sufficient cause to proceed is not found by that Panel. If the complaint is not dismissed, the Panel shall then direct the staff to make a prompt, discreet, and confidential investigation. In no instance may the staff undertake any investigation or make any contact with anyone other than the complainant and the judge unless authorized to do so by the Investigation Panel. Upon completion, the Panel shall review the findings from the investigation. The Panel shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant and the judge shall be informed in writing of the dismissal. (Use of an Investigation Panel is entirely new.)**

- D. *Mandatory Notice to the Judge.* If a complaint, or any portion of it, is not dismissed by the Investigation Panel following the discreet and confidential investigation, then the Panel shall notify the judge in writing immediately of those portions of the complaint that the Panel has concluded warrant further examination and attention. The judge shall receive the complaint, or any portion of the complaint that is not dismissed, along with any information prepared by or for the Panel or staff to enable the judge to adequately respond to the issues in the complaint. The judge shall be invited to respond to each of the issues from the complaint that the Panel has identified as possible violations of the Arkansas Code of Judicial Conduct.**

***The time for the judge to respond shall be within 30 days unless shortened or enlarged by the Investigation Panel for good cause.***

(New language — replaces “optional” notice)

- E. *Dismissal or Formal Statement of Allegations.* The Investigation Panel may dismiss the complaint with notice to the complainant and the judge, or it may direct a formal statement of allegations citing specific provisions of the Code of Judicial Conduct alleged to have been violated and the specific facts offered in support the alleged violation(s) be prepared and served on the responding judge along with all materials prepared by the Panel or staff. Service may be by any means provided for service of process in the Arkansas Rules of Civil Procedure. (New — the Investigation Panel directs the investigation and the preparation of a formal statement of allegations, if any.)**
- F. *Answer.* The judge shall file a written answer with the Executive Director within thirty (30) days after the service upon him/her of the statement of allegations, unless such time is enlarged by the Executive Director. The answer may include a description of circumstances of a mitigating nature bearing on the charge. (Extends time to answer to 30 days from 20 days)**

#### **PROPOSED RULE 9. HEARING ON FORMAL STATEMENT OF ALLEGATIONS**

- A. *Hearing.* The hearing on a formal statement of allegations prepared against a judge shall be before a Hearing Panel comprised of a full nine-member Commission on which no member of the Investigation Panel which considered the initial**

**complaint may serve. This same nine-member Hearing Panel shall be the only panel to hear the particular allegations, whether the hearing is recessed, continued, or requires more than one day. (This is new.)**

- B. Scheduling. The Commission shall, upon the receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing to commence within 90 days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time and place of the hearing. (Same as current Rule 11.A., but time is limited to 90 days.)**
- C. Discovery. The respondent judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure. Both the Commission and the respondent judge shall have the authority to issue summonses for any persons and subpoenas for any witnesses, and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to an investigation or proceeding. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Any fees or expenses incurred for issuing or service of subpoenas or summonses shall be borne by the requesting party. The Circuit Court of Pulaski County shall have the power to enforce process.  
(This combines Current Rules 8. L. and 11. B.)**
- D. Right to Counsel. The judge shall be entitled to counsel of his/her own choice. (Current 8. K.)**
- E. Conduct of Hearing. The Arkansas Rules of Evidence shall apply and all testimony shall be under oath. Commission attorneys, or special counsel retained for the purpose, shall present the case to the fact finder. The judge whose conduct is in question shall be permitted to adduce evidence and cross examine witnesses. Facts justifying action shall be established by clear and convincing evidence. The proceedings shall be recorded verbatim. (This is current Rule 11.D.)**
- F. Immunity from Prosecution. The Commission and the judge are authorized to request from the appropriate prosecuting authorities immunity from criminal prosecution for a reluctant witness, using the procedure outlined in Ark. Code Ann. § 16-43-601, et seq. (This is Current Rule 8. M.)**
- G. Public Hearing. The hearing shall be open to the public and**

**recorded by a certified court reporter. (This is new.)**

- H. Determination. The Commission shall, within sixty (60) days after the hearing, submit its finding and recommendations, together with the record and transcript of the proceedings. Both the decision of the Commission and a copy of the record shall be served upon the judge. (Current Rule 11. F.)**
- I. Disposition. In its report, the Commission shall dispose of the case in one of the following ways: (1) If it finds that there has been no misconduct, the complaint shall be dismissed and the Director shall send the judge and each complainant notice of dismissal; (2) If it finds that there has been conduct that is cause for discipline but for which an admonishment or informal adjustment is appropriate, it may so inform or admonish the judge, direct professional treatment, counseling, or assistance for the judge, or impose conditions on the judge's future conduct; and, (3) If it finds there has been conduct that is cause for formal discipline it shall be imposed as set forth in Rule 11. J. (Derived from current Rule 9. E. 1 and 2.)**
- J. Commission Decision – Formal Discipline. The recommendation for formal discipline shall be concurred in by a majority of all members of the Commission and may include one or more of the following: (1) A recommendation to the Supreme Court that the judge be removed from office; (2) A recommendation to the Supreme Court that the judge be suspended, with or without pay; (3) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be granted leave with pay; (4) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be retired and considered eligible for his/her retirement benefits, pursuant to Ark. Code Ann. § 24-8-217 (1987); (5) Reprimand or censure. (Current 11. G. 1-5).**
- K. Dissent. If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the Supreme Court. (Current Rule 11. H.)**
- L. Opinion to be Filed. The final decision in any case which has been the subject of a formal disciplinary hearing shall be in writing and shall be filed with the clerk of the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven (7) days of rendition. (Current 11. J)**

- M. Witness Fees.** *All witnesses shall receive fees and expenses in the amount allowed by rule or statute for witnesses in civil cases. Expenses of witnesses shall be borne by the party calling them.* (Current Rule 11. K.)

**7. Private/Informal Disposition of Complaints**

The suggestion was made by lawyers, judges, Commissioners, former Commissioners, and Commission staff that private or informal disposition of complaints should be an option available to the Commission under appropriate circumstances. The Judicial Council's Recommendation included the following:

***There should be another option for the Commission prior to a public reprimand or censure. The Office of Professional Conduct has an option called "Non-Public Warning." Note: On the Judicial Discipline and Disability Commission website the Information Pamphlet referred to the ability of the commission to "make an informal adjustment (such as direct professional counseling or assistance for the judge) or issue a public admonishment, reprimand or censure."***

These suggestions were rejected by the Task Force on the grounds that private disposition is not appropriate when the conduct involves elected public officials, a view shared by the Arkansas Supreme Court. (See Ark. Court Rules, Commission Rule 7, Publisher's Notes, para 8-9 at 1269-70 (2006); Appendix.)

**8. Jurisdiction — Ambiguities and Conflicts Between Rules 6 and 12**

At the first meeting of the Task Force, the Executive Director asked that consideration be given to eliminating uncertainty an ambiguity in Rules 6 and 12 regarding two issues; (1) whether the Commission has jurisdiction to discipline a judge who is no longer in office, and (2) whether a judge who has been disciplined by the Commission may be subjected to disciplinary action before the Committee on Professional Conduct. The Task Force recognizes the ambiguities and recommends proposed revised Rule 6 addressing these issues. (*Proposed changes to Rule 6 also include language appearing in current Rules 9. A. and B.*)

**Current Rules 6 and 12.**

**A. Judge in Office.** The authority of the Commission extends to judges and justices in office, and the term "judge" includes anyone, whether or not a lawyer, who is an officer of the judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, or magistrate,

whether full-time or part-time. Allegations regarding conduct of a judge or justice occurring prior to or during service in judicial office, including the service of a retired judge who has been recalled, are within the jurisdiction of the Commission and shall be considered by it.

**B. Former Judge.** Conduct of a former judge which has been adjudicated by a final decision reached by the Commission shall not become the subject of disciplinary proceedings before the Supreme Court Committee on Professional Conduct.

## **RULE 12. SUPREME COURT REVIEW**

**D. Scope of Discipline.** The Supreme Court, when considering removal of a judge, shall determine whether discipline as a lawyer also is warranted. If removal is deemed appropriate, the court shall notify the judge, the Commission, and the Supreme Court Committee on Professional Conduct, and give each an opportunity to be heard on the issue of the imposition of lawyer discipline.

(Emphasis added)

## **PROPOSED RULE 6. JURISDICTION.**

***The Commission shall administer the judicial discipline and disability system, and perform such duties as are required to enforce these rules. The Commission shall have jurisdiction over any "judge" regarding allegations of misconduct or disability, pursuant to the limitations set forth below.***

**A. Establishment of Grounds for Discipline.** *The grounds for discipline are those established in part (b) of Ark. Const. Amend. 66 and those established by Act 637 of 1989. (Current Rule 9.A.)*

**B. Distinguished from Appeal.** *In the absence of fraud, corrupt motive or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he or she understands it. Claims of error shall be considered only in appeals from court proceedings. (Current Rule 9. B.)*

**C. Judge-in-Office.** *As used in this section, "judge" is anyone, whether or not a lawyer, who is an officer of the judicial system and who is eligible to perform judicial functions, including a justice, magistrate, court commissioner, special master, or referee, whether full-time or part-time. The Commission shall have jurisdiction over allegations of misconduct occurring prior to or during service as a judge, and regarding issues of disability during service as a judge.*

**D. Former Judge.** *The Commission has continuing jurisdiction over any former judge regarding allegations of misconduct occurring before or during service as a judge, provided that a complaint is received within one year of the person's last service as a judge.*

**E. Overlapping Jurisdiction.** *Nothing in these rules, or in the provisions regarding jurisdiction of the Commission, shall be construed as limiting in any way the jurisdiction of the Arkansas Supreme Court Committee on Professional Conduct.* (This makes clear that discipline as a judge does not preclude discipline as a lawyer — current Rule 12 would remain unchanged.)

## **9. Limitations of Actions/Disposition of Complaints**

There is no statute of limitations on matters before the Commission, nor should there be, as past conduct may affect fitness for judicial office and should be open to examination. Once a complaint involving the conduct of a judge is made, all parties agree it should be resolved within a reasonable time. The Judicial Council recommends requiring disposition of all complaints within 18 months by adoption of the following proposed rule:

### ***Proposed Rule 15. Complaints Shall Be Adjudicated or Dismissed Within 18 Months.***

***A sworn complaint shall be dismissed if not disposed of as provided in these Rules within 18 months from receipt of the complaint by the Commission. The following periods are excluded in computing the time for disposition:***

***(a) All periods of delay granted at the request of the judge.***

***(b) All periods of suspension under Rule 10.***

***The dismissal of a complaint under this or any Rule of the Commission shall be an absolute bar to any subsequent filing of the complaint or any complaint that could have been joined with the complaint dismissed.***

The Executive Director and staff agree the proposed rule would be workable provided the "good cause" provision were included. The Task Force recommends adoption. The Task Force also recommends that the Commission adopt Guidelines or Policies establishing appropriate deadlines for presenting intake complaints to the Investigation Panel (perhaps 45 days) and completing the investigation (perhaps 90 days).

## **Conclusion**

The Task Force stands ready to redraft its recommendations in any form the Board of Governors or House of Delegates deems appropriate. The Task Force wishes to thank all those who offered their comments and assistance, particularly the Arkansas Judicial Council, current and former members of the Commission, its Executive Director and staff.

Robert M. Cearley, Jr., Chair  
November 28, 2006

### **Task Force Members:**

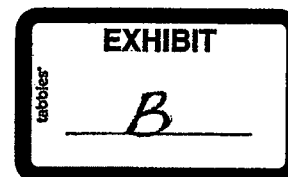
Judge Kathleen Bell  
Vince O. Chadick  
Nate Coulter  
Thomas F. Curry  
Judge Elizabeth Danielson  
Judge Robert Edwards  
Judge Mary Ann Gunn  
Barbara A. Halsey  
Larry Jegley  
Sean T. Keith  
Gary R. Nutter  
Judge Willard Proctor  
Kent J. Rubens  
Judge Hamilton H. Singleton

## Summary of Recommendations

The Task Force recommends the action indicated in each of the following areas:

1. **Intake Procedures and Complaint Forms** — adoption by the Commission of a new sworn or verified complaint form and intake instructions pursuant to authority granted in Rule 2, and abrogation of the “sworn complaint” and “statement in lieu of complaint” provided for in Rule 8. E. in favor of a formal statement of allegations that meets all notice and specificity requirements of due process (*This can be accomplished without a rule change.*);
2. **Anonymous Complaints and Media Based Complaints** — modification of current Rule 8. A. in accordance with Proposed Rule 8.A. to require that all but anonymous complaints be signed;
3. **Contact with Potential Witnesses** — modification of current Rule 8 as spelled out in Proposed Rule 8, and adoption of appropriate Guidelines and Policies governing contact with potential witnesses and dissemination of information;
4. **Ex Parte Communication** — adoption of a new Rule prohibiting *ex parte* communication on matters of substance between persons involved in the investigation and persons involved in the adjudication of a complaint (*to replace current Rule 11 which is eliminated by Proposed Rules 8 and 9*);
5. **Use of Separate Investigation Panels and Hearing Panels** — adoption of new rules to involve Commission members and Alternates in early decision-making on complaints and investigations (*See Proposed Rules 8 and 9, and Proposed Rule 1. F.*);
6. **Redundancy in Hearing Procedures — Number of Appearances** — abrogation of current Rules 8 and 9 and adoption of proposed Rules 8 and 9 to alleviate the “screening hearing” and the “Probable Cause” hearing and to provide for screening, investigation and hearing of complaints by separate Investigation Panels and Hearing Panels (*See Proposed Rules 8 and 9*);
7. **Private/Informal Disposition of Complaints** — rejection of the suggestion of private or informal disposition of complaints;
8. **Jurisdiction — Ambiguities and Conflicts Between Rules 6 and 12** — adoption of revised Rule 6 to confirm jurisdiction of the Commission over current and former judges regarding conduct occurring prior to or during service in judicial office, and jurisdiction of the Supreme Court Committee on Professional Conduct over the conduct of former judges, even if already adjudicated by the Commission; and,
9. **Limitation of Actions/Disposition of Complaints** — adoption by Rule of a timetable for adjudication of complaints (*See Proposed Rule 15*).

April 26, 2007



## Recommended Changes in Rules, Policies, and Guidelines

### 1. Proposed Intake Instructions and Complaint Form

**Arkansas Judicial Discipline & Disability Commission**  
**Tower Building, Suite #1060**  
**Little Rock, Arkansas 72201**  
**Phone: (501)682-1050 Fax (501)682-1049**

#### PLEASE READ CAREFULLY

The Judicial Discipline and Disability Commission is an independent state agency that receives and investigates complaints concerning judges. The Commission has the authority to discipline or recommend discipline to the Arkansas Supreme Court for judges who are in violation of the Arkansas Code Of Judicial Conduct adopted by the Supreme Court. The Commission may issue a public admonishment, reprimand, or censure. For more serious violations, the Commission may make recommendations to the Arkansas Supreme Court to impose sanctions that include removal from the bench, suspension from the bench with or without pay, leave with or without pay, or involuntary retirement.

The Commission's authority is limited to violations of the Arkansas Code of Judicial Conduct and the sanctions set out above. It has no authority to compel a judge to take any particular course of action nor does the Commission become involved in litigation of legal matters. Please understand that the Commission cannot represent you, give you any legal advice, or change the outcome of a court decision.

If you feel that a judge has acted in a manner that violates the Arkansas Code Of Judicial Conduct, fill out as completely as possible the attached complaint form, and return it to this office. Include any additional documentation that you believe is relevant and material to your complaint. If sufficient cause is found to file a formal complaint, some or all of your supporting documentation may be included as exhibits. **Please provide a narrative account of the judge's actions of which you complain that is FACTUAL.** Conclusory statements such as, "He's a liar," "She didn't do me right," "He's incompetent," etc., have no evidentiary value and do not assist in the evaluation of your complaint.

The Commission will review the information in your complaint form, conduct any necessary investigation and advise you whether your concerns fall within the Commission's limited authority. Each complainant will be informed by letter whether a complaint states a basis for further



consideration. If after initial investigation it appears that there is sufficient cause to proceed, the Commission will prepare a formal complaint which will be sent to the judge for a response. The complainant will be provided a copy of any response and have the opportunity for rebuttal, if appropriate. Any rebuttal will be made available to the respondent judge. All these documents will then be forwarded to the Commission for review and action. You will be advised in writing of the Commission's final action. In some instances, the Commission will conduct a hearing on a complaint. If that should occur, you may have the opportunity to appear and testify at the hearing. Copies of the Arkansas Code of Judicial Conduct can be found at the following website <http://courts.state.ar.us> under "Judicial Discipline & Disability Commission."

**Arkansas Judicial Discipline & Disability Commission  
Tower Building - Suite # 1060 - 323 Center Street  
Little Rock, AR 72201**

**Phone: (501) 682-1050 / FAX: (501) 682-1049**

**Email: [jddc@arkansas.gov](mailto:jddc@arkansas.gov)**

**COMPLAINT FORM**

Please type or print all information

I hereby request an investigation of \_\_\_\_\_ of the \_\_\_\_\_  
(Judge's name)

\_\_\_\_\_ Court in \_\_\_\_\_, \_\_\_\_\_ Arkansas.  
(City) (County)

Your Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: Daytime ( ) \_\_\_\_\_ Evening ( ) \_\_\_\_\_

Cellular Phone ( ) \_\_\_\_\_ Email address: \_\_\_\_\_

**STATEMENT OF FACTS**

**1. State below the specific details of what the judge did that you think constitutes misconduct or indicates disability. (Please type or print legibly in black ink.)**

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**ATTACH ADDITIONAL SHEET(S) IF NEEDED.**

2) *Did you have a case before this judge?*       yes      no  
*If yes, is the case still pending?*       yes      no

**3) When and where did the ethical misconduct occur?**

**Date:** \_\_\_\_\_ **Time:** \_\_\_\_\_ **Location:** \_\_\_\_\_

**4) If your complaint arose from a court case, please provide the following information:**

**Case Name:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_

***Plaintiff's information:***

***Defendant's information:***

**Name** \_\_\_\_\_

**Name** \_\_\_\_\_

**Address** \_\_\_\_\_

**Address** \_\_\_\_\_

**Daytime phone** \_\_\_\_\_

**Daytime phone** \_\_\_\_\_

***Attorney's information (Plaintiff):***

***Attorney's information (Defendant):***

Name \_\_\_\_\_

Name \_\_\_\_\_

**Address** \_\_\_\_\_

**Address** \_\_\_\_\_

**Phone** \_\_\_\_\_**Phone** \_\_\_\_\_

***Additional Attorney's Information (use additional pages if necessary):***

Name \_\_\_\_\_

Name \_\_\_\_\_

**Address** \_\_\_\_\_

**Address** \_\_\_\_\_

**Phone** \_\_\_\_\_**Phone** \_\_\_\_\_

***Represented*** \_\_\_\_\_

**Represented** \_\_\_\_\_

**What type of case gives rise to this complaint? Please check one.**

☐ criminal; ☐ small claims; ☐ civil; ☐ probate;  
☐ domestic (family) relations; ☐ other (specify) \_\_\_\_\_

**How are you interested in the case? Please check one.**

☐ plaintiff / petitioner; ☐ defendant/respondent; ☐ unrelated to a case;  
☐ attorney for \_\_\_\_\_; ☐ witness for \_\_\_\_\_;  
☐ family member of \_\_\_\_\_; ☐ other (specify) \_\_\_\_\_

**5) List documents you have attached that help support your complaint that the judge has engaged in misconduct or has a disability:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6) List documents that are not attached but will be needed by the Commission to support your complaint and may help in the Commission's investigation:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7) Identify, if possible, any other witnesses to the judge's conduct: (example: reporters, bailiffs, clerks, court reporters, law enforcement officers, or other attorneys, plaintiffs, defendants or witnesses that were present at the time).**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**NOTE: STATE LAW PROVIDES THAT THE JUDICIAL DISCIPLINE & DISABILITY COMMISSION'S PROCEEDINGS ON THIS REQUEST FOR INVESTIGATION ARE CONFIDENTIAL. FILING A COMPLAINT IS NOT A SUBSTITUTE FOR APPEAL AND HAS NO EFFECT ON YOUR LEGAL OR APPELLATE RIGHTS. THE APPELLATE PROCESS IS SUBJECT TO STRICT DEADLINES AND YOU SHOULD IMMEDIATELY OBTAIN LEGAL ADVICE ABOUT YOUR APPELLATE REMEDIES..**

**I request that the above complaint, supported by the Statement of Facts, be investigated by the Judicial Discipline & Disability Commission and that appropriate action be taken.**

***I swear or affirm under penalty of perjury that the information furnished is true and correct to the best of my knowledge, information, and belief.***

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## **PROPOSED Rule 1. F.**

**Investigation Panels and Hearing Panels.** The initial review and investigation of complaints shall be conducted by and at the direction of an Investigation Panel, which shall act only by majority vote of the Panel. At the regular organization meetings of the Commission, the chairman shall appoint from the nine Commission members and nine Alternates no fewer than three Investigation Panels of three members, each consisting of one judicial member, one lawyer member, and one public member. Thus constituted, these Investigation Panels shall conduct and direct the initial review and investigation of complaints without the knowledge or involvement of the Commission whose members shall serve as the Hearing Panel and conduct the formal proceedings to inquire into charges against a judge. Complaints shall be allocated among the Investigation Panels in rotation. No Commission member or Alternate shall serve on a Hearing Panel involving any matter considered by an Investigation Panel of which he or she was a member.

## **PROPOSED RULE 6. JURISDICTION.**

The Commission shall administer the judicial discipline and disability system, and perform such duties as are required to enforce these rules. The Commission shall have jurisdiction over any "judge" regarding allegations of misconduct or disability, pursuant to the limitations set forth below.

**A. Establishment of Grounds for Discipline.** The grounds for discipline are those established in part (b) of Ark. Const. Amend. 66 and those established by Act 637 of 1989. *(Current Rule 9.A.)*

**B. Distinguished from Appeal.** In the absence of fraud, corrupt motive or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he or she understands it. Claims of error shall be considered only in appeals from court proceedings. *(Current Rule 9. B.)*

**C. Judge-in-Office.** As used in this section, "judge" is anyone, whether or not a lawyer, who is an officer of the judicial system and who is eligible to perform judicial functions, including a justice, magistrate, court commissioner, special master, referee, whether full-time or part-time. The Commission shall have jurisdiction over allegations of misconduct occurring prior to or during service as a judge, and regarding issues of disability during service as a judge.

**D. Former Judge.** The Commission has continuing jurisdiction over any former judge regarding allegations of misconduct occurring before or during service as a judge, provided that a complaint is received within one year of the person's last service as a judge.

**E. Overlapping Jurisdiction.** Nothing in these rules, or in the provisions regarding jurisdiction of the Commission, shall be construed as limiting in any way the jurisdiction of the Arkansas Supreme Court Committee on Professional Conduct. *(This makes clear that*

*discipline as a judge does not preclude discipline as a lawyer — current Rule 12 would remain unchanged.)*

**PROPOSED RULE 8. PROCEDURES OF COMMISSION REGARDING  
CONDUCT OF A JUDGE**

- A. Initiation of Inquiry.** In accordance with these rules, any sworn or verified complaint brought to the attention of the Commission stating facts that, if true, would be grounds for discipline, shall be good cause to initiate an inquiry relating to the conduct of a judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge. *(Same as current Rule 8. A.)*

All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director. If the Executive Director, an individual staff member, Commissioner member or Alternate files, solicits, or initiates a complaint, he or she shall sign the complaint. *(This is new.)*

All contacts with potential witnesses shall be in accordance with these Rules. *(This is new.)*

- B. Screening.** The Executive Director shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge shall be informed in writing of the dismissal. *(Similar to current Rule 8 B, but deleting initial investigation by the Executive Director.)*
- C. Investigation of Complaints.** All complaints not summarily dismissed by the Executive Director shall then be presented to an Investigation Panel. The Investigation Panel shall dismiss all complaints for which sufficient cause to proceed is not found by that Panel. If the complaint is not dismissed, the Panel shall then direct the staff to make a prompt, discreet, and confidential investigation. In no instance may the staff undertake any investigation or make any contact with anyone other than the complainant and the judge unless authorized to do so by the Investigation Panel. Upon completion, the Panel shall review the findings from the investigation. The Panel shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant and the judge shall be informed in writing of the dismissal. *(Use of an Investigation Panel is entirely new.)*
- D. Mandatory Notice to the Judge.** If a complaint, or any portion of it, is not dismissed by the Investigation Panel following the discreet and confidential investigation, then the Panel shall notify the judge in writing immediately of those portions of the complaint that the Panel has concluded warrant further examination

and attention. The judge shall receive the complaint, or any portion of the complaint that is not dismissed, along with any information prepared by or for the Panel or staff to enable the judge to adequately respond to the issues in the complaint. The judge shall be invited to respond to each of the issues from the complaint that the Panel has identified as possible violations of the Arkansas Code of Judicial Conduct.

The time for the judge to respond shall be within 30 days unless shortened or enlarged by the Investigation Panel for good cause.

*(New language — replaces "optional" notice)*

- E. Dismissal or Formal Statement of Allegations.** The Investigation Panel may dismiss the complaint with notice to the complainant and the judge, or it may direct a formal statement of allegations citing specific provisions of the Code of Judicial Conduct alleged to have been violated and the specific facts offered in support the alleged violation(s) be prepared and served on the responding judge along with all materials prepared by the Panel or staff. Service may be by any means provided for service of process in the Arkansas Rules of Civil Procedure. *(New — the Investigation Panel directs the investigation and the preparation of a formal statement of allegations, if any.)*
- F. Answer.** The judge shall file a written answer with the Executive Director within thirty (30) days after the service upon him/her of the statement of allegations, unless such time is enlarged by the Executive Director. The answer may include a description of circumstances of a mitigating nature bearing on the charge. *(Extends time to answer to 30 days from 20 days)*

#### **PROPOSED RULE 9. HEARING ON FORMAL STATEMENT OF ALLEGATIONS**

- A. Hearing.** The hearing on a formal statement of allegations prepared against a judge shall be before a Hearing Panel comprised of a full nine-member Commission on which no member of the Investigation Panel which considered the initial complaint may serve. This same nine-member Hearing Panel shall be the only panel to hear the particular allegations, whether the hearing is recessed, continued, or requires more than one day. *(This is new.)*
- B. Scheduling.** The Commission shall, upon the receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing to commence within 90 days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time and place of the hearing. *(Current Rule 11.A., but time is limited to 90 days.)*
- C. Discovery.** The respondent judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure. Both the Commission

and the respondent judge shall have the authority to issue summonses for any persons and subpoenas for any witnesses, and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to an investigation or proceeding. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Any fees or expenses incurred for issuing or service of subpoenas or summonses shall be borne by the requesting party. The Circuit Court of Pulaski County shall have the power to enforce process. *(This is the Current Rules 8.L. and 11. B.)*

- D. **Right to Counsel.** The judge shall be entitled to counsel of his/her own choice. *(Current 8. K.)*
- E. **Conduct of Hearing.** The Arkansas Rules of Evidence shall apply and all testimony shall be under oath. Commission attorneys, or special counsel retained for the purpose, shall present the case to the fact finder. The judge whose conduct is in question shall be permitted to adduce evidence and cross examine witnesses. Facts justifying action shall be established by clear and convincing evidence. The proceedings shall be recorded verbatim. *(Combination of Rules 11.D.)*
- F. **Immunity from Prosecution.** The Commission and the judge are authorized to request from the appropriate prosecuting authorities immunity from criminal prosecution for a reluctant witness, using the procedure outlined in Ark. Code Ann. § 16-43-601, et seq. *(This is Current Rule 8. M.)*
- G. **Public Hearing.** The hearing shall be open to the public and recorded by a certified court reporter. *(This is new.)*
- H. **Determination.** The Commission shall, within sixty (60) days after the hearing, submit its finding and recommendations, together with the record and transcript of the proceedings. Both the decision of the Commission and a copy of the record shall be served upon the judge. *(Current Rule 11. F.)*
- I. **Disposition.** In its report, the Commission shall dispose of the case in one of the following ways: (1) If it finds that there has been no misconduct, the complaint shall be dismissed and the Director shall send the judge and each complainant notice of dismissal; (2) If it finds that there has been conduct that is cause for discipline but for which an admonishment or informal adjustment is appropriate, it may so inform or admonish the judge, direct professional treatment, counseling, or assistance for the judge, or impose conditions on the judge's future conduct; and (3) If it finds there has been conduct that is cause for formal discipline it shall be imposed as set forth in Rule 9.J. *(Derived from current Rule 9. E. 1 and 2.)*
- J. **Commission Decision – Formal Discipline.** The recommendation for formal discipline shall be concurred in by a majority of all members of the Commission and may include one or more of the following: (1) A recommendation to the Supreme Court that the judge be removed from office; (2) A recommendation to the Supreme

Court that the judge be suspended, with or without pay; (3) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be granted leave with pay; (4) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be retired and considered eligible for his/her retirement benefits, pursuant to Ark. Code Ann. § 24-8-217 (1987); (5) Reprimand or censure. (*Current 11. G. 1-5*)

- K. Dissent.** If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the Supreme Court. (*Current Rule 11. H.*)
- L. Opinion to be Filed.** The final decision in any case which has been the subject of a formal disciplinary hearing shall be in writing and shall be filed with the clerk of the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven (7) days of rendition. (*Current 11. J*)
- M. Witness Fees.** All witnesses shall receive fees and expenses in the amount allowed by rule or statute for witnesses in civil cases. Expenses of witnesses shall be borne by the party calling them. (*Current Rule 11. K.*)

#### **PROPOSED RULE 11. EX PARTE COMMUNICATION.**

Commission Members and Alternates shall not communicate ex parte with the Executive Director or the staff of the Commission, or the respondent judicial officer, his or her family, friends, representatives, or counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or Rules of the Commission, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A violation of this rule may be cause for removal of any member or Alternate from a panel before which a matter is pending.

#### **PROPOSED RULE 15. COMPLAINTS SHALL BE ADJUDICATED OR DISMISSED WITHIN 18 MONTHS.**

A sworn complaint shall be dismissed if not disposed of as provided in these Rules within 18 months from receipt of the complaint by the Commission. The following periods are excluded in computing the time for disposition:

- (a) All periods of delay granted at the request of the judge;
- (b) All periods of suspension under Rule 10.

The dismissal of a complaint under this or any Rule of the Commission shall be an absolute bar to any subsequent filing of the complaint or any complaint that could have

been joined with the complaint dismissed.

*(The Task Force also recommends that the Commission adopt Guidelines or Policies establishing appropriate deadlines for presenting intake complaints to the panel (perhaps 45 days) and completing the investigation (perhaps 90 days)).*